

PATRICK J. CRONIN, WSBA No. 28254
WINSTON & CASHATT
1900 Bank of America Financial Center
601 W. Riverside Ave.
Spokane, WA 99201
Telephone: (509) 838-6131

Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK A. HOLUM, an individual,)	
)	
	Plaintiff,) No. CV-08-081-EFS
vs.)	
)	DEFENDANTS' REPLY LR 56.1 IN
EXTENDICARE HOMES, INC., a)	OPPOSITION TO PLAINTIFF'S
corporation; EXTENDICARE)	STATEMENTS OF FACTS
HEALTH SERVICES, INC., a)	
corporation; and EXTENDICARE)	
HEALTH FACILITIES, INC., a)	
corporation,)	
)	
	Defendants.)

The plaintiff's LR 56 Statement of Facts contains multiple inaccuracies and allegations unsupported by the records to which they refer; many of the allegations are wholly inadmissible under the Rules of Evidence and cannot be considered to create an issue of fact to defeat summary judgment. FRCP 56(e). Defendants have moved independently to strike the inadmissible portions of the accompanying declarations,

DEFENDANTS' REPLY LR 56.1 IN OPPOSITION
TO PLAINTIFF'S STATEMENTS OF FACTS -- 1

LAW OFFICES OF
Winston & Cashatt
1900 SEAFIRST FINANCIAL CENTER
SPOKANE, WASHINGTON 99201
(509) 838-6131

1 and will not duplicate those objections for each statement of fact here; defendants
2 object to the following portions of plaintiff's statement of facts because they are not
3 supported by the portions of the record cited:
4

5 1. Contrary to plaintiff's fact No. 5, the Declaration of Michelle Rashka
6 cited does not state she "specifically" told The Gardens of Mr. Harris' "assaultive
7 behavior"; she testifies only that she "believes" she told unidentified persons about
8 Mr. Harris' behavior at the group home. (Rashka Decl., ¶13)
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10 2. Contrary to plaintiff's Fact No. 12, no evidence of any written notice or
11 warning of Mr. Harris' "uncontrollable" behavior is contained in any
12 contemporaneous medical records provided by plaintiff, nor attached to the supporting
13 declarations cited.
14

15 3. Contrary to plaintiff's Fact No. 14, Mr. Harris was admitted to Sacred
16 Heart Medical Center the morning of November 29th at 8:30, based on respiratory
17 problems, and returned to The Gardens two hours later; the contemporaneous medical
18 records provided by both plaintiff and defendants do not reflect any record of assaults
19 of staff prior to his short admission at SHMC. (See, Decl. of Gregg Calvert,
20 Exs. 6-11; Declarations of Sincerie Arnold and Sue Goodrick)
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1 4. Contrary to plaintiff's Fact No. 15, Mr. Calvert's testimony that the
2 progress notes show no incidents of violence, or psychotic episodes, are true based on
3 the progress notes attached to his declaration. Ms. Arnold and Ms. Rashka's
4 testimony that there were "warnings" do not appear in any written or
5 contemporaneous medical records. (See, Aff. of Gregg Calvert, Exs. 6-11;
6 Declarations of Sincerie Arnold and Sue Goodrick)
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8 5. Contrary to plaintiff's Fact No. 16, plaintiff presents no evidence that
9 Sincerie Arnold's notations in Mr. Harris' records identify that Mr. Harris was a
10 "danger." In fact, in the same document on which Ms. Arnold relies to support her
11 claim of Mr. Harris' deterioration, she also specifically indicated Mr. Harris had no
12 incidents in the last seven days of verbally abusive or physically abusive behavior
13 (Decl. of Gregg Calvert, Ex. 6). Nothing in Ex. P-2 to the Declaration of Sincerie
14 Arnold, also cited, identifies danger to staff or residents.
15

16 6. Contrary to plaintiff's Fact No. 19, the Declaration of Ms. Goodrick cited
17 does not state that "on multiple occasions, before November 29, 2004 the Director and
18 Administrative Director at The Gardens were told that T.H. was going to hurt
19 someone," and needed to be removed. (See, Decl. of Sue Goodrick, ¶18)
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1 7. Contrary to plaintiff's Fact No. 26, Mr. Harris was not admitted to the
2 Sacred Heart Medical Center on November 29 at 8:30 a.m. for "dangerous and
3 unmanageable behavior". Instead, the records reflect that Mr. Harris was admitted to
4 Sacred Heart Medical Center for increased secretions, treated on a non-urgent basis,
5 and released as stable less than two hours later at 10:30. (Aff. of Gregg, Ex. 11; Decl.
6 of Sincerie Arnold, Ex. P. 5)
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8 8. Contrary to plaintiff's Fact No. 29, Mr. Harris did not engage in
9 "multiple assaults" on the staff. On November 29th, the contemporaneous medical
10 records establish that his parents restrained him in his bed at 4:40 p.m., and that he
11 kicked a staff member at 6:45 p.m. (Decl. of Sincerie Arnold, Ex. P-3)
12

13 9. Contrary to plaintiff's Fact No. 32, Ms. Goodrick does not testify that it
14 was "certain that T.H. would become violent and would in fact assault other people."
15 Ms. Goodrick instead testifies in her declaration that it was "reasonable to conclude,"
16 that he was going to hurt himself, other residents or staff. (Decl. of Sue Goodrick,
17 ¶19)
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19 10. Contrary to plaintiff's Fact No. 33, changes were made to Mr. Harris'
20 care once his physician was contacted; his doctor ordered medication and the entry in
21 his chart after the first noted assault on November 29th indicated he was "resting
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23
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1 quietly,” had “marked ↓ of mucous” and “↓ level of agitation.” (Aff. of Gregg
2 Calvert, Ex. 11)

3 DATED this 27th day of January, 2009.
4

5 s/Patrick J. Cronin, WSBA No. 28254
6 WINSTON & CASHATT
7 Attorneys for Defendants
8 601 W. Riverside, Ste. 1900
9 Spokane, WA 99201
10 (509) 838-6131
11 Facsimile: (509) 838-1416
12 E-mail Address: pjc@winstoncashatt.com
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1 I hereby certify that on January 27, 2009, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the following:
4

5 Marcia M. Meade
6 Dawson & Meade
7 m@d-mlaw.com

8 Robert F. Greer, II
9 rfgreer@fggzlaw.com

10 Attorneys for Plaintiff

11 s/Patrick J. Cronin, WSBA No. 28254
12 WINSTON & CASHATT
13 Attorneys for Defendants
14 601 W. Riverside, Ste. 1900
15 Spokane, WA 99201
16 (509) 838-6131
17 Facsimile: (509) 838-1416
18 E-mail Address: pjc@winstoncashatt.com

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